



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: E.M. Brown, Inc.

File: B-225340

Date: April 7, 1987

DIGEST

The withdrawal of a bid in person is not the exclusive method that can be utilized for that purpose, since a bid can be withdrawn in person by a bidder prior to bid opening or by mail or telegraphic notice received in the Office designated in the solicitation prior to bid opening.

DECISION

E.M. Brown, Inc. protests the award of a contract to Earthmovers Unlimited under invitation for bids (IFB) No. SCS-70-PA-86 issued by the United States Department of Agriculture for the restoration of an abandoned mine project in Pennsylvania. Brown contends that the agency erred in accepting a late bid withdrawal and the substitution of a new bid from Earthmovers.

We deny the protest.

The agency reports that when the bids were opened on November 25, 1986, two bid envelopes were in hand from Earthmovers. The first envelope opened contained Earthmovers' initial bid of \$66,489.00; the second envelope contained Earthmovers' withdrawal of the first bid and a new bid of \$43,366.50. Brown's bid of \$52,540.00 was the next low bid.

Brown protested to our Office contending that the contracting officer had carried Earthmovers' second bid with the withdrawal of the initial bid into the bid room after all of the other bids had been opened. Brown further contends that Earthmovers did not withdraw its first bid in person, contrary to the requirements of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7(f) (1985), which states as follows:

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"(f) A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid."

It is the agency's position that Earthmovers' withdrawal and substitute bid were received prior to bid opening and were in the possession of the bid opening officer at the time bids were opened, that is, that the contracting officer did not bring the Earthmovers' letter of withdrawal and its replacement bid with him when he entered the bid opening room after opening commenced. Furthermore, the agency asserts that the withdrawal of a bid in person is not the exclusive means by which a bid can be effectively withdrawn.

In comments on the agency report, the protester appears to have abandoned its allegation that the Earthmovers' documents were late.^{1/} Instead, it focuses on the lack of any withdrawal of the Earthmovers' bid in person, and that the bid was not withdrawn prior to bid opening because the withdrawal was included with the new bid and thus the agency did not become aware of the withdrawal until after the time set for bid opening. We find no merit to this protest.

One method for bid withdrawal is the one cited by the protester and referred to above, that is, withdrawal by an authorized representative in person prior to the time set for receipts of bids. Under the plain language of the clause and other provisions of the solicitation, however, personal withdrawal is by no means the exclusive method that can be utilized. "A bid may be withdrawn in person by a bidder" (emphasis added) or it "may be modified or withdrawn by written or telegraphic notice if such notice is received [in the office specified in the solicitation] by the time specified for receipt of bids." 48 C.F.R. § 52.214-5(b). The obvious purpose of these requirements is to prevent fraud or abuse of the competitive bid system. Thus, as in the case of a bid submission, a written withdrawal or modification of a bid need only be in the possession of the designated government office by the time set for bid opening. Actual knowledge by government officials of the written withdrawal of a bid prior to bid opening is not required.

^{1/} There is no evidence on the record to rebut the agency's contention that the Earthmovers' documents were in the possession of the bid opening officer at the time opening commenced and therefore the protester has not met its burden of proof. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 CPD ¶ 192.

The record shows that Earthmovers not only called the contracting office about its intended bid withdrawal but that the envelope containing the withdrawal and the replacement bid arrived at the designated office before the exact time set for the opening of bids.

The protest is denied.

for Seymour S. Evans
Harry R. Van Cleve
General Counsel